

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

Albert Gray, Administrator, et al. :
Plaintiffs, :
v. : CA 04-312L
Jeffrey Derderian, et al. :
Defendants. :

Estate of Jude B. Henault, et al., :
Plaintiffs, :
v. : CA 03-483
American Foam Corporation, et al., :
Defendants. :

STATE OF RHODE ISLAND'S MOTION FOR ENTRY

Defendant State of Rhode Island hereby moves this Honorable Court for an Order allowing the parties to the criminal cases, State v. Daniel Biechele, K1/2003-0653, State v. Michael Derderian, K1/2003-0654 and State v. Jeffrey A. Derderian, K1/2003-655, State v. Jeffrey Derderian, et al., to enter the evidence repository ("warehouse") warehouse for the purpose of viewing and examining the materials stored. This Motion is not directed at the State in its civil capacity and the State does not seek permission for the State's civil counsel to enter the warehouse that is the subject of this Motion.

409

Respectfully submitted,
State of Rhode Island
By Its Attorney,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 5Th day of April, 2005, a
copy of the within was e-mailed to the certification list.

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STATE OF RHODE ISLAND'S
MEMORANDUM IN SUPPORT OF ITS MOTION FOR ENTRY

Defendant State of Rhode Island hereby moves this Honorable Court for an Order allowing the parties to the criminal cases, State v. Daniel Biechele, K1/2003-0653, State v. Michael Derderian, K1/2003-0654 and State v. Jeffrey A. Derderian, K1/2003-655, to enter the evidence repository ("warehouse") for the purpose of viewing and examining the materials stored therein. This Motion is not brought by the State in its civil capacity and the State does not seek permission for the State's civil counsel or the criminal defendants' civil counsel to enter the warehouse that is the subject of this Motion.

Said criminal cases are pending in the Providence County Superior Court. As part of its duty of due diligence to the defendants therein, the State wishes to review with the representatives of said defendants the materials held in the warehouse. In pursuit of this duty the parties to the criminal actions have agreed to view the material in the warehouse

jointly under the supervision of the representatives of parties in the civil actions responsible for maintaining the warehouse¹.

The State as a party to the criminal cases possesses certain information and material that it has shared with parties to the civil case through Superior Court Orders. In furtherance of that cooperation prior to filing this Motion, the State consulted with the attorneys representing those plaintiffs and defendants who assumed responsibility for the warehouse and have shared equally in the costs, to determine whether access to the warehouse could be provided to the litigants in the criminal case for the purpose of examining, photographing and measuring artifacts stored therein. The civil defendants responsible for the maintenance of the warehouse, have assented to this request upon the condition that access is allowed to the criminal litigants only, without waiver of the rights of the civil defendants who have assumed responsibility for the costs of preserving the artifacts and maintaining the warehouse to contribution from the parties to the criminal cases (who are also defendants in the civil cases) of their pro rata share of these costs, such costs to include the cost of removing, preserving, warehousing, cataloging and otherwise maintaining the artifacts from the fire scene and the warehouse. The amount of such contribution shall be determined prior to entry to the warehouse by the parties to the criminal cases by mutual agreement between those parties and the attorneys for the civil defendants who have to date been paying one-half the cost of the warehouse. Counsel for the civil plaintiffs who have to date been responsible for one-half the cost of preserving

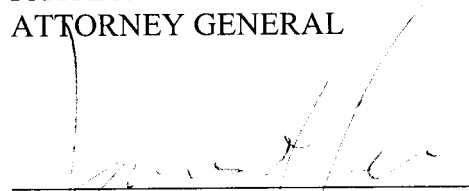
¹ Prior to the removal of all cases related to the Station Nightclub fire from the Providence County Superior Court, counsel who were appointed in the Superior Court as members of the Plaintiff's Steering Committee and counsel for certain defendants assumed responsibility for preserving, removing, transporting, storing and cataloging the artifacts from the fire scene after the scene was released by the authorities. The parties also assumed responsibility for the costs associated with these activities and with maintenance of the warehouse, including the cost of installing an alarm system and sprinkler system.

the artifacts and maintaining the warehouse have also assented to the entry of the parties to the criminal cases to the warehouse upon these terms. Nothing herein shall serve as a waiver of the rights of the parties to the civil litigation responsible for the maintenance of the warehouse to seek pro rata contribution for past and future costs from plaintiffs and defendants, respectively, in the civil litigation, consistent with the Order of United States Magistrate Judge David L. Martin, entered March 14, 2005, in connection with JBL Inc.'s Motion for Limited Discovery, to include the cost of removing, preserving, warehousing, cataloging and otherwise maintaining the artifacts from the fire scene and the warehouse.

Therefore the State respectfully requests that this Honorable Court allow it as the prosecution in the criminal cases and the defendants' representatives in said criminal cases entry into said warehouse at a time and upon such terms and conditions mutually agreed upon with the plaintiffs' and defendants' representatives responsible for the warehouse.

Respectfully submitted,
State of Rhode Island
By Its Attorney,

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